

JPA File No.: 05-079  
AG Contract No.: KR06-0026TRN  
Project: Roadway Improvements  
Section: SR 77 Oro Valley  
**TRACS No.: H545901D**  
**Budget Source Item No.: N/A**

## JOINT PROJECT AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
EVERGREEN-STEAM PUMP, L.L.C.  
STEAM PUMP VILLAGE INVESTORS, LLC

**THIS AGREEMENT** is entered into this date 18th of April, 2006, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State"), EVERGREEN-STEAM PUMP, L.L.C. ("Evergreen"), and STEAM PUMP VILLAGE INVESTORS, LLC ("Village"), acting by and through their authorized representatives.

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. Evergreen is empowered to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of Evergreen.

3. Village is empowered to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of Village.

4. The State plans to construct roadway improvements in the near future along SR 77, within the Town of Oro Valley (the "Roadway Improvements"). Evergreen and Village plan to construct a commercial development (the "Development") along SR 77 adjacent to a portion of the Roadway Improvements. To coordinate and expedite the construction of the Roadway Improvements in the vicinity of the Development, to avoid a duplication of roadway construction by the State, Evergreen and Village, and to minimize the disruption to owners and patrons of the Development and to travelers on SR 77, the State has agreed to allow Evergreen to construct, at no cost to the State, those Roadway Improvements as further described on Exhibit "A" (the "Evergreen Roadway Improvements"), in return for which the State has agreed to construct, at no cost to Evergreen and Village, those Roadway Improvements as further described on Exhibit "B" (the "State's Roadway Improvements"). The Evergreen Roadway Improvements and the State's Roadway Improvements are shown in Exhibit "C".

5. The Evergreen Roadway Improvements must be constructed to State standards, as noted in the project plans, and prior to construction Evergreen will apply and receive approval from the Tucson District Office for the proper encroachment permit.

**THEREFORE**, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

NO. 28187  
Filed with the Secretary of State  
Dated: 4-18-06  
James K. Shum  
Secretary of State  
By: [Signature]

## **II. SCOPE OF WORK**

### 1. The State shall:

a. Approve design plans, specifications and such other documents that are required for construction of the Roadway Improvements on SR 77, including the Evergreen Roadway Improvements.

b. Require Evergreen to apply and receive approval for an encroachment permit from the Tucson District Office.

c. Be responsible for maintenance of SR 77 upon completion of construction of the Roadway Improvements, including the Evergreen Roadway Improvements except the turnouts and related infrastructure.

d. Monitor quality control inspections with Evergreen during the construction of the Evergreen Roadway Improvements and upon completion and acceptance thereof, perform the final inspection and notify Evergreen in writing that the Evergreen Roadway Improvements have been constructed in accordance with State standards and accepted for maintenance by the State.

e. Construct the State's Roadway Improvements as shown in Exhibit "C".

f. Allow Village to obtain a permit to construct temporary entrances (consisting solely of improvements connecting the Development to the existing edge of pavement of SR 77) in the event the State's Roadway Improvements are delayed.

g. Include in the project specifications direction to the contractor that the State's Roadway Improvements will be built at the beginning (during the first third) of the State's roadway improvement project.

h. Be responsible for the maintenance of the traffic signals at the intersection of SR 77 and Rams Field Pass once the signals are constructed and accepted by ADOT.

### 2. Evergreen shall:

a. Provide design plans, specifications and such other documents to State standards as are required for construction of the Evergreen Roadway Improvements as shown in Exhibit "C".

b. Obtain the necessary encroachment permit for construction of the Evergreen Roadway Improvements.

c. Construct the Evergreen Roadway Improvements on SR 77 to State standards, at no cost to the State as noted in the project plans and as shown in Exhibit "C".

d. Be responsible for the maintenance of Evergreen's turnout(s) and related infrastructure, which Evergreen will construct, as outlined in the encroachment permit and shown in Exhibit "C".

### 3. Village shall:

a. Perform a Traffic Signal Warrant study at the SR 77 and Rams Field Pass intersection (MP 80.66) in conjunction with the development and prior to signalization of the intersection. Such a study may be performed by Village at any time upon its own initiative, and will be performed by Village upon request from ADOT provided that such request is not made more often than once per calendar year.

- b. Bear all costs of signalization of the Rams Field Pass intersection with SR 77 when warranted and deemed necessary by ADOT as indicated by the Traffic Signal Warrant study.
- c. Be responsible for the maintenance of Village's turnout(s) and related infrastructure, which State will construct, as shown in Exhibit "C".

### **III. MISCELLANEOUS PROVISIONS**

1. The Recitals to this Agreement are incorporated herein. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of construction of the Evergreen Roadway Improvements and the State's Roadway Improvements. Either party may cancel this Agreement at any time prior to commencement of construction of the Evergreen Roadway Improvements, upon a thirty-day (30) written notice to the other parties.

2. The State assumes no financial obligation or financial liability under this Agreement nor for any resulting construction project. Evergreen assumes full responsibility for the design, plans, specifications, and reports, which arise, result from or relate to the Evergreen Roadway Improvements, the engineering in connection therewith and the construction of the Evergreen Roadway Improvements contemplated, and for cost over-runs and construction claims relating thereto. It is understood and agreed that the State's participation is confined solely to that set forth under this Agreement.

3. Evergreen and Village, each as to its own actions, hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and /or damages incurred by the State and from any claims made against the State, which directly or indirectly result from this Agreement, except to the extent caused by the negligence or intentional misconduct of the State, or any of its departments, agencies, officers and employees. Costs incurred by the State, and of its departments, agencies, officers or employees shall include, in the event of any action, court costs and expenses of litigation and attorney's fees.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement. Accordingly, all books, accounts, reports, files and other records relating to this Agreement shall be subject at all reasonable times to inspection and audit by the State for five years after completion of this Agreement. Such records shall be produced at the Tucson District Office.

6. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by binding arbitration under the construction arbitration rules of the American Arbitration Association existing at the time of arbitration in accordance with Arizona Revised Statutes § 12-1518.

7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, Arizona 85007  
(602) 712-7525  
(602) 712-7424 Fax

Evergreen Steam Pump, L.L.C.  
Attn: Laura Ortiz  
2390 E. Camelback Road Suite 410  
Phoenix, Arizona 85016  
Phone # (602) 808-8600  
Fax# (602) 808-9100

Steam Pump Village Investors, LLC  
2200 E. River Road, Suite 115  
Tucson, Arizona 85718  
Attention: William Kelley  
Phone # (520) 577-0200  
Fax # (520) 299-5602

8. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State and at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

10. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of the State's legal counsel that the State is authorized under the laws of this State to enter into this Agreement and that this Agreement is in proper form.

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**IN WITNESS WHEREOF**, the parties have executed this Joint Project Agreement the day and year first above written.

**Evergreen-Steam Pump, L.L.C.**

By: Evergreen-Oro Valley Partners, L.L.C.

Its: Administrative Member

By: Evergreen Development Company-2004, L.L.C.

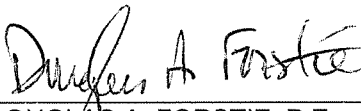
Its: Manager

By: Evergreen Devco. Inc.,  
a California corporation

Its: Manager

**STATE OF ARIZONA**

Department of Transportation

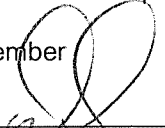
By   
DOUGLAS A. FORSTIE, P.E.  
Deputy State Engineer, Operations

By   
LAURA ORTIZ  
Its: Vice President

**STEAM PUMP VILLAGE INVESTORS, LLC**

By: Diamond Ventures, Inc.,  
an Arizona corporation

Its: Member

By   
DIAMOND VENTURES, INC.  
Its: MEMBER

## Exhibit "A"

### Evergreen Roadway Improvements

The Evergreen Roadway Improvements are located adjacent to Phases I, II, and III of the Development and are generally described as follows:

Construction of a paved lane of travel, construction of a continuous right turn lane, construction of the fourth leg to the existing traffic signal at the Honeywell south entrance (MP 80.15), shoulder improvements and other associated improvements.

## Exhibit "B"

### State's Roadway Improvements

The State's Roadway Improvements are located adjacent to Phase IV of the Development and are generally described as follows:

Construction of a paved continuous right-turn lane, taper and other associated improvements;

Two (2) drive entrances into the Development, including associated drainage pipes;

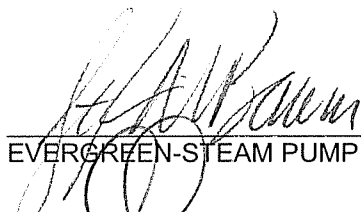
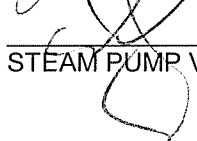
Median reconstruction to provide a left-turn pocket into the most northerly drive entrance into the Development.

Note: All of the above improvements are conceptually shown in the "60% plans" and described in the "Opinion of Probable Cost – Phase IV", both of which have been previously submitted to ADOT by Evergreen.

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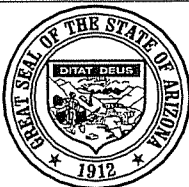
ATTORNEY APPROVAL FORM FOR  
EVERGREEN-STEAM PUMP, LLC  
&  
STEAM PUMP VILLAGE INVESTORS, LLC

I have reviewed the above referenced Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, EVERGREEN-STEAM PUMP, LLC and STEAM PUMP VILLAGE INVESTORS, LLC, and declare that this Agreement is within the powers and authority granted to EVERGREEN-STEAM PUMP, LLC and STEAM PUMP VILLAGE INVESTORS, LLC under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

  
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EVERGREEN-STEAM PUMP, LLC  
  
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STEAM PUMP VILLAGE INVESTORS, LLC

Date March 21, 2006

Date March 8, 2006

<p>TERRY GODDARD Attorney General</p>	<div data-bbox="745 54 935 239"></div> <p>OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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**JOINT PROJECT AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR06-0026TRN (**JPA 05-079**), a Joint Project Agreement between The State of Arizona and Evergreen-Steam Pump, L.L.C., Steam Pump Village Investors, LLC, has been reviewed pursuant to A.R.S. § 28-401, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: April 11, 2006

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:955604  
Attachment